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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/099,752	03/15/2002	John C. Munson	SOFT-0004	5197

7590 10/27/2005
David Judson, Esquire
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EXAMINER

REVAK, CHRISTOPHER A

ART UNIT PAPER NUMBER

2131

DATE MAILED: 10/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/099,752

Applicant(s)

MUNSON, JOHN C.

Examiner

Christopher A. Revak

Art Unit

2131

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-79 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>see attached</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statements submitted on June 16, 2002 and March 15, 2002 are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Specification

2. The disclosure is objected to because of the following informalities: On pages 1 and 2 of the specification, reference is made to application 09/399,705 that is now U.S. Patent 6,681,331.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-55 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims currently recite of method steps that are software alone and of itself that is not tangibly embodied. The examiner suggests amending the claims to recite of a "computer implemented" method.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-79 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-35 of U.S. Patent No.

6,681,331. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-79 of the instant application are envisioned by patent claims 1-35 in that claims 1-35 of the patent contains all the limitations of claims 1-79 of the instant application. Claims 1-79 of the instant application therefore are not patentably distinct from the earlier patent claims, and as such, are unpatentable for obvious-type double patenting.

7. Claims 1-79 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-31 of U.S. Patent No.

6,963,983. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-79 of the instant application are envisioned by patent claims 1-31 in that claims 1-31 of the patent contains all the limitations of

claims 1-79 of the instant application. Claims 1-79 of the instant application therefore are not patentably distinct from the earlier patent claims, and as such, are unpatentable for obvious-type double patenting.

8. Claims 1-79 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-70 of copending Application No. 10/462,462. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-79 of the instant application are envisioned by the claims 1-70 of the co-pending application in that claims 1-70 of the co-pending application contains all the limitations of claims 1-79 of the instant application. Claims 1-79 of the instant application therefore are not patentably distinct from the co-pending application, and as such, are unpatentable for obvious-type double patenting.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Allowable Subject Matter

9. Claims 1-79 would allowable upon filing terminal disclaimers to overcome the double patenting rejections and upon correcting claims 1-55 to overcome claiming non-statutory subject matter.

10. The following is a statement of reasons for the indication of allowable subject matter:

As per claim 1, it was not found to be taught in the prior art of monitoring transitions between and among program instrument points within an internal operating environment on the computer system to produce program execution trace data, comparing the program execution trace data with data indicative of nominal operation of the computer system, and identifying anomalous operation of the computer system based on the result of the comparison.

As per claims 32 and 56, it was not found to be taught in the prior art of monitoring transitions between and among instrumentation points within an internal operating environment on the computer system wherein the monitoring is performed by employing software signals obtained from instrumented code in the program modules, providing program instrumentation trace data representative of the transitions between and among program modules, comparing reduced amount of trace data with predefined data indicative of nominal operations of the computer system, and identifying an anomalous operation of the computer system based on the result of the comparison.


Conclusion

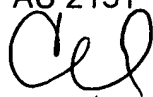
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher A. Revak whose telephone number is 571-272-3794. The examiner can normally be reached on Monday-Friday, 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on 571-272-3795. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CR

October 25, 2005

Christopher Revak
Primary Examiner
AU 2131

10/25/05